



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

TO: Members, Public Disclosure Commission

FROM: Doug Ellis
Assistant Director

DATE: November 22, 2005

SUBJECT: Report on 45-Day Letter filed by Richard Shepard against King Broadcasting Company

On September 27, 2005, Richard Shepard filed a 45-day Citizen Action Letter with the Office of the Attorney General and the King County Prosecutor's Office alleging that King Broadcasting Company (KBC) violated RCW 42.17.640 by making contributions to candidates that exceeded the allowable contribution limits.

Specifically, Mr. Shepard alleges that:

- 1) KBC sponsored two gubernatorial debates in 2004 in which Ruth Bennett, the Libertarian candidate for Governor, was not invited to participate. The candidates who participated, Dino Rossi, Ron Sims and Christine Gregoire, received a benefit of free air time constituting a contribution exceeding statutory contribution limits.
- 2) KBC conducted and reported the results of polling in 2004 in which Ruth Bennett was not included. The candidates who were included in the polling, Dino Rossi, Ron Sims and Christine Gregoire, received a benefit constituting a contribution exceeding statutory contribution limits.

On October 19, 2005 the Attorney General's Office requested that PDC staff investigate the complaint.

The investigation centered on:

- Review of applicable laws.
- Review of evidentiary documentation provided by Mr. Shepard.
- Review of responses submitted on behalf of King Broadcasting Company by Stuart R. Dunwoody, an attorney with Davis, Wright, Tremaine, LLP.

Applicable Laws

RCW 42.17.020(14) states in part:

(b) "Contribution" does not include:

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

RCW 42.17.640 states in part:

“(1) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a state legislative office that in the aggregate exceed *five hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed *¹one thousand dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary...”

Candidate Debates

KBC counsel, Mr. Dunwoody, stated that the broadcasting of gubernatorial debates constitutes news items and features that are excluded from the definition of contribution under RCW 42.17.020(14)(b)(vi).

KBC hosted two gubernatorial debates in 2004, one on September 7, 2004 prior to the primary election, and the other on October 12, 2004 prior to the November general election. Candidates Christine Gregoire, Ron Sims and Dino Rossi were invited to the pre-primary election debate and Christine Gregoire and Dino Rossi were invited to the pre-general election debate.

In determining which candidates to include in the debates, KBC used the criteria established by the Debate Advisory Standards Project of the Center for American Politics and Citizenship.

Dunwoody stated KBC used two of the criterion set out in the Debate Advisory Standards Project in determining who would be invited. Those criteria were: 1) the candidate has received 5 percent or more of the vote in a public opinion survey or tested trial heat and 2)

¹ The contributions limits contain an indexing provision in accordance with RCW 42.17. For the 2004 election, a candidate for state office such as Governor was limited to \$1,350 per election from a corporation, union, political committee, individual, or other entity.

the candidate has reported the receipt of at least one campaign contribution of \$50 or more per 1,000 residents for the office being sought to the proper regulatory agency.

The following gubernatorial candidates, based on the criteria used by KBC, were not invited to participate in the 2004 KBC debates: Mike the Mover, Eugen Buculei, Don Hansler, Scott Headland, John W. Aiken, Jr., Bill Meyer, Michael Nelson and Ruth Bennett.

In 2000 and 1996, KBC also restricted participation in gubernatorial debates to “viable” candidates. A debate held on October 23, 2000 included only Republican John Carlson and Democrat Gary Locke. A debate held on November 3, 1996 included only Republican Ellen Craswell and Democrat Gary Locke.

Candidate Polling

Mr. Dunwoody stated that broadcasting the results of polling conducted by KBC relating to the 2004 gubernatorial contest also constitutes news items and features that are excluded from the definition of contribution under RCW 42.17.020(14)(b)(vi).

KBC hired Survey USA to conduct nine (9) polls relating to the 2004 governor’s race.

An initial name recognition survey referencing Dino Rossi, Christine Gregoire, Ron Sims and Phil Talmadge was conducted on March 25, 2004. KBC paid for three polls during the primary election naming Ron Sims and Christine Gregoire and five polls during the general election naming Dino Rossi and Christine Gregoire.

KBC used the results from these polls in its reporting on the 2004 governor’s race, posted the poll results on its website and made the poll results available to the Associated Press.

Mr. Dunwoody stated that KBC, in the exercise of its news judgment, and because it has limited resources, conducted polling only regarding candidates that it believed were viable. KBC determined, based on candidate fundraising levels, that the only viable candidates were Republican Dino Rossi and Democrats Christine Gregoire and Ron Sims.

Mr. Dunwoody stated that KBC did not give the poll results to any candidate.

Staff Recommendation: The activity of KBC in inviting gubernatorial debate participants and in conducting polling for broadcast *in a regularly scheduled news medium that is of primary interest to the general public* does not constitute a contribution under RCW 42.17.020(14)(b)(vi).

Therefore, the allegations are unsubstantiated and merit a recommendation to the Office of the Attorney General of dismissal.